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NEA: Policy Constraints

A. Arms Control

1. Presidential Directive 13: This directive which limits arms sales and transfers to all countries except NATO, Australia, New Zealand, and Japan for the purpose of reducing international traffic in arms, constrains our work somewhat in that it requires time consuming reviews and requests for exceptions to make a major system available outside of the exempted countries. On the other hand, the PD provides a framework for denying requests which eases the strain ad hoc denial might have on bilateral relations.

2. NSDM 186 and NSDM 289: These decision memoranda which provide guidelines for the transfer of arms to the lower Persian Gulf states and Oman and to the countries of South Asia have been largely subsumed by the provisions of PD 13.

3. Section 38(b)(3), Arms Export Control Act: This provision prohibits the commercial sale of major defense equipment worth more than $100 million except to NATO, Australia, New Zealand and Japan. This constraint requires us to handle sales over that amount on a government-to-government basis whatever the preference of the purchaser. The recent raising of the ceiling from $35 to $100 million gives us much more flexibility. The addition of a thirty day Congressional notification provision for all sales over $7 million, however, imposes an element of delay in meeting even non-controversial requests and increases the possibility of denial of more controversial requests.

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4. Section 36(b), 36(c) and 36(d), Arms Export Control Act: These provisions which require thirty day advance notifications to Congress of FMS sales, commercial sales or transfers of technology above certain dollar levels, constrain our work in that they add yet another delay onto the generally significant delays purchasers experience in their receipt of hardware. Occasionally these sales become subject to considerable controversy and potential veto in the Congress. The sale of F-15s to Saudi Arabia is a prime example.

B. Nuclear Non-Proliferation

1. Section 699 and 670, Foreign Assistance Act: These sections, which require termination of economic and military assistance to any country which delivers or receives nuclear enrichment or reprocessing technology or materials not under multilateral auspices and with full scope safeguards, provide a considerable impediment to our relations with Pakistan, especially in our efforts to strengthen Pakistani security in the face of the Soviet invasion of Afghanistan. Pakistan is the only country to which the 699 provisions have been applied.

2. Section 403a, Nuclear Non-Proliferation Act of 1978: This provision requires that a non-nuclear weapons state agree to safeguards over all its nuclear facilities as a condition for nuclear cooperation with the United States following a two year grace period after enactment of the legislation. The grace period has now expired. Further shipments of enriched uranium to India's Tarapur Atomic Power Plant under our 1963 bilateral agreement with the Indians will require a Presidential waiver subject to Congressional override. This will make difficult, if not impossible any further nuclear cooperation with India and could, paradoxically, have an adverse effect on our non-proliferation objectives since India will be tempted to seek alternative sources of nuclear fuel through enrichment or reprocessing in domestic facilities.

C. War Powers

PL 93-148 (War Powers Resolution) -- requires consultation and reports to Congress in certain situations where U.S. armed forces are introduced into a foreign territory while equipped for combat, or potential situations of imminent hostilities; purports to require the withdrawal of forces introduced into such hostile situations whenever Congress adopts a concurrent resolution directing such withdrawal, or if specified periods of time elapse without Congressional authorization for such immediate attention of the President and Congress to the legal and policy considerations involved in any hostile use of U.S. armed forces; potentially it could be used by Congress to oppose particular uses of the armed forces.

D. Commerce and Trade

1. Section 7(a) et seq., Foreign Corrupt Practices Act of 1977 (15 U.S.C., Pub. L. 95-213, Title I): Makes certain payments and gifts to foreign officials illegal and establishes internal record keeping standards for corporations ... U.S. firms are particularly concerned about the lack of guidelines in the FCPA to clarify their responsibility for the acts of foreign agents and the legal boundaries of facilitation, gift, and entertainment

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expenses. The Department of Justice has established a review procedure which will provide U.S. firms with advisory opinions on FCPA enforcement (which the SEC will honor). Nevertheless, Justice is reluctant to issue explicit guidelines on a criminal statute. Senator Chafee has introduced a bill (S.2763) which does seek to clarify sections of the FCPA, harmonize SEC and Justice jurisdiction, and reduce record keeping requirements.

2. Title II, Export Admin. Amendments of 1977 (Pub. L. 95-52) to the Export Administration Act of 1969 (50 U.S.C. app. S.2401 et. seq.): The antiboycott law administered by the Department of Commerce prohibits any U.S. person from providing any information to Arab boycott officials or refusing to do business with boycotted countries or individuals. The antiboycott regulations have a negative impact on our commercial interests by causing U.S. firms to lose important contracts they might otherwise have won, by discouraging some U.S. companies from entering the Middle East market, and by forming an irritant in our overall relations with Arab countries.

3. Section 999, Internal Revenue Code (26 U.S.C. 999), the "Ribicoff Amendment": The antiboycott law administered by the Treasury Department denies certain foreign tax benefits to U.S. companies that sign contracts with prohibited Arab boycott language or provide information to boycott officials. This Act adds a further complicating, and sometimes contradictory, layer to U.S. antiboycott restrictions and is causing some U.S. firm to incur tax liabilities on their Middle East sales.

4. Sections 911 and 913, Internal Revenue Code (26 U.S.C. 911, 913): These sections, enacted in 1978, eliminated the general exemption from federal income taxes previously enjoyed by Americans working abroad and substituted only very restricted tax exemptions. U.S. firms contend this tax treatment pressures them to reduce the U.S. citizen percentage of their staffs in expensive Middle Eastern countries which erodes our commercial effectiveness. The Senate Finance Committee is considering several proposals to ease tax burdens on Americans overseas while the House Ways and Means Committee has held hearings on the subject.

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5. Section 6, Export Admin, Act of 1979 (50 U.S.C. app. 2405(i): Requires notice to the Congress prior to approval of export licenses for certain goods to countries identified by the Secretary of State as supporters of international terrorism (Iraq, Libya, Syria, and PDRY) which would make a significant contribution to the military potential of these countries or enhance their ability to support terrorism. These export controls have particularly damaged our civil aircraft export market in the Middle East because large aircraft are specifically included under the Act. In particular, aircraft sales to Iraq and Syria may be lost as a direct result of these restrictions. Moreover, senior Arab aviation officials have asserted that our position in other countries is being damaged by the growing perception of the U.S. as an unreliable supplier of civil aircraft.

6. Section 231, Foreign Assistance Act of 1961, as amended (22 U.S.C. 2191): This section restricts the issuance of insurance by the Overseas Private Investment Corporation covering private business operations in countries with a per capita GNP in excess of $1,000. OPIC war risk and letter of credit insurance is, consequently, unavailable in many countries in the Middle East and North Africa where this kind of insurance would facilitate a stronger U.S. economic presence. The OPIC Act (S.2186), now pending in Congress, would repeal the $1,000 per capita restriction.

7. Section 871, Internal Revenue Code (26 U.S.C. 871): The Internal Revenue Service levies a 30% withholding tax on dividends and on interest remitted to foreigners. This disincentive to prospective investors constrains our ability to facilitate the placement of surplus OPEC funds in the U.S. This is particularly important when the accumulating surpluses are partly a result of our efforts to encourage oil exporters to maintain high enough production to help meet world demands.

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